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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re A.S., a Person Coming Under the
Juvenile Court Law.

LAKE COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.P.,

Defendant and Appellant.

A156225

(Lake County
Super. Ct. No. JV320481)

When the juvenile court terminated reunification services for appellant M.P. (Mother) and scheduled a selection-and-implementation hearing under Welfare and Institutions Code section 366.26,¹ it ordered that Mother continue to have visits with her daughter pending the hearing. Respondent Lake County Department of Social Services (Department) canceled those visits without seeking court approval after Mother was arrested. Mother argues that the deprivation of visits violated her due process rights and prejudiced her by leaving her unable to avoid the termination of her parental rights by presenting evidence of successful visits. We disagree and affirm.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

Mother was 14 years old when she gave birth to A.S. in July 2016, and the presumed father was 16. Mother was herself a dependent of the juvenile court and was living with a foster parent during at least part of the proceedings below. Mother has learning deficiencies and language impairments and had received special-education services for five years. She also had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and bipolar disorder. The Department became involved with the family soon after A.S. was born and it received reports that the parents inadequately cared for their infant and failed to follow a safety plan they had agreed to.

The Department filed a juvenile dependency petition when A.S. was around two months old, and A.S. was ordered detained and was placed in foster care. As amended, the petition alleged that Mother has anger-management issues, learning deficiencies, and minimal coping skills, which impaired her ability to parent and protect A.S. and created a substantial risk that the infant would suffer serious physical harm or illness. (§ 300, subd. (b) [failure to protect].) The amended petition included allegations that the parents regularly yelled and argued with each other to the point where the management of the apartment complex where they lived had threatened to evict them; that medical staff raised concerns after A.S. was born that the parents appeared to have developmental delays that affected their ability to process information about how to care for their daughter; that Mother was observed providing her infant with inappropriate foods, such as frosting and a cracker; and that Mother appeared to struggle to understand her daughter's cues or take directions about her parenting, such as when she fed A.S. formula with a bottle with a flow that was too strong and when she "jostled" A.S. when she cried instead of rocking her. The juvenile court sustained the amended petition in January 2017 after the parents waived their right to a contested hearing.

At a dispositional hearing in May 2017, the juvenile court adjudged A.S. a dependent minor, continued her in out-of-home care, and ordered reunification services

for both parents. Mother was ordered to have weekly supervised one-hour visits with her daughter. The court also directed the Department to file a supplemental report addressing how visitation was going, and it scheduled a hearing to address Mother's visitation. In a visitation update filed in June 2017, the Department reported that Mother was making progress in recognizing her daughter's behavioral cues but was still struggling to learn A.S.'s needs, such as when Mother tasted A.S.'s baby food and did not think A.S. would like it because she (Mother) did not. A social worker helped Mother with reading labels and following directions, and Mother was "able to retain information with repetition and multiple discussions and prompts from the social worker."

Over the following year, Mother made efforts to reunify with A.S. She received one-on-one parenting instruction, and the curriculum was adjusted to accommodate Mother's developmental needs. Mother's visitation arrangements were modified at one point so that Mother would not need to miss school in order to visit A.S. After Mother made "some progress" during visits, visitation was increased. Still, she continued to need "constant prompting" from the social worker regarding "eating, cleaning, recognizing cues and being more vocal and developmentally interactive with" her daughter. Because of Mother's "special circumstance[s]," the Department recommended continuing services, which the juvenile court ordered following a review hearing in December 2017.² Mother was to receive two supervised visits per week, for a total of five hours.

Mother struggled with anger issues; was involved in a physical altercation at her foster home; and made loud, inflammatory comments to strangers in public, such as, "You're a slut!" and "You're Ugly!" Mother's foster mother reported that Mother's "explosive behaviors" began escalating, and at one point Mother got so upset she punched and broke the inside frame of the closet door in her room. Mother struggled to master necessary parenting skills, and she was unable to progress to unsupervised or

² At the same hearing, the court terminated reunification services for A.S.'s presumed father, who did not participate in his case plan and was not present at the hearing. He is not a party to this appeal.

extended visits because of safety concerns. By May 2018, the Department was recommending that the juvenile court terminate Mother's reunification services.

Following a contested 18-month review hearing on September 6, 2018, the juvenile court found that Mother had made minimal progress in her case plan, terminated reunification services, and scheduled a selection-and-implementation hearing to be held four months later, on January 3, 2019. At the end of the hearing, Mother's attorney requested that the then-current visitation schedule continue. County counsel requested that visits be reduced to once a month. After input from A.S.'s attorney, the court ordered that supervised one-hour visits occur twice a month.

Mother apparently visited with A.S. the day after the review hearing, on September 7, 2018. About a month after the review hearing, Mother was arrested and charged with assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) after she was accused of charging one of her housemates while holding a knife. No further visits were held because the Department was concerned about A.S.'s safety. As a result, Mother missed seven or eight visits totaling seven or eight hours of visitation. According to a review report filed before the selection-and-implementation hearing, "The Department requested but did not receive the police report in time to request that the court make a finding of detriment. Due to timing, the Department is willing to allow [Mother] a goodbye visit with [A.S.] that will be facilitated by the County Adoption agency."

No evidence was presented at the selection-and-implementation hearing on January 3, 2019. An attorney specially appearing for Mother objected to the termination of parental rights and stated that Mother believed she had not been provided with an adequate opportunity to parent A.S. The attorney argued that it was inappropriate to end visits without a finding of detriment because it deprived Mother of her due process rights. The attorney concluded: "[T]he opportunity to retain that bond was removed from her without the proper due process. She'd like to raise that objection and also just generally voice that she feels that she is the best parent for her daughter and that she has not been given adequate opportunity to fulfill that role. And she asks for you to provide her that opportunity."

County counsel argued that parental rights should be terminated because A.S. was adoptable and no exceptions to adoption existed. A.S.'s attorney joined in the request that parental rights be terminated. The minor's counsel disagreed with the argument that Mother had been provided an inadequate opportunity to parent A.S., stating that Mother "was provided 18 months of services. Based upon the age of the child, she is technically entitled to six. I think in this particular case, the Department went above and beyond to try to assist her." As for visitation being suspended, counsel stated that "there may have been a due process violation" but said the issue was "almost a red herring" because although the missed visits may have arguably affected Mother's ability to bond with A.S., there was no evidence presented at the hearing regarding bonding.

The juvenile court followed the Department's recommendations, terminated parental rights, and selected adoption as the permanent plan. Mother timely appealed.

II. DISCUSSION

Where a juvenile court terminates reunification services and orders that a selection-and-implementation hearing be held, the court shall continue to permit the parent to visit the child pending the hearing unless the court finds that visitation would be detrimental to the minor. (§ 366.21, subd. (h).) Mother's sole argument on appeal is that the juvenile court committed reversible error when it terminated her parental rights after the visitation ordered under section 366.21, subdivision (h), was unilaterally cancelled without the necessary finding of detriment. Mother is mistaken.

It is settled that after reunification services are terminated, the focus of dependency proceedings shifts from reunification to the needs of the minor for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) If the juvenile court determines at the permanency-planning hearing that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption unless a parent can show an exception to adoption exists. (§ 366.26, subd. (c)(1); see *In re S.B.* (2008) 164 Cal.App.4th 289, 296-297.) Mother does not challenge the finding that A.S. is adoptable or argue that she established any of the exceptions to adoption.

Instead, Mother contends that the fact she was wrongfully deprived of visitation pending the selection-and-implementation hearing deprived her of her ability to establish the beneficial-relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(i)). That is, Mother argues that if visits been allowed to continue, she would have been able to establish that she maintained regular visitation and contact with A.S. and that A.S. would benefit from continuing the relationship. (*Ibid.*; *In re S.B.*, *supra*, 164 Cal.App.4th at p. 297.) This argument first assumes that it was error for the Department to unilaterally stop visits after Mother’s arrest. Although the Department does not challenge this assumption, we do not believe that an error is self-evident under the circumstances. During the 18-month reunification period, the Department provided Mother with substantial reunification services, and it recognized the importance of visitation, taking steps to schedule visits around Mother’s school commitments. The seven or eight hour-long visits were cancelled by the Department during the post-reunification period only after Mother’s arrest for a safety-related incident, and the Department claims it was unable to seek a change in the court order before the pending permanency-planning hearing as a result of time constraints.

But even assuming it was error for the Department to cancel visits without first seeking court approval, we cannot conclude that Mother has established she was prejudiced. Mother assumes that she was unable to establish the beneficial-relationship exception only because she was deprived of the seven or eight canceled visits. We are not persuaded. As we have said, Mother received more than 18 months of reunification services and visits with her daughter, and was only denied these handful of visits after she was arrested for an incident that raised legitimate safety concerns. Perhaps recognizing the weak connection between the cancelled visits and the inability to establish an exception to adoption, Mother contends that the cancellation of visits was “an infringement on the trial mechanism itself, [and that] reversal per se is warranted.” Not so. As the authority cited by Mother stresses, the United States Supreme Court has found structural errors “only in a very limited class of cases.” (*In re Angela C.* (2002) 99 Cal.App.4th 389, 395 [lack of notice of continuance was in nature of “trial error,” not

structural error]; see also *In re Enrique G.* (2006) 140 Cal.App.4th 676, 683 [even where appointment of guardian ad litem violated parent's due process rights and procedure used did not meet even minimal requirements, error was found to be harmless].)

We conclude that the error was harmless under any potentially applicable standard for reviewing whether Mother was prejudiced. Again, Mother does not challenge the juvenile court's finding that her daughter is adoptable, and she offered no evidence below that any exception to adoption existed. Parents face a high burden to establish the beneficial-relationship exception, and “ ‘it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement.’ ” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621; see also *In re Scott B.* (2010) 188 Cal.App.4th 452, 469 [“Because a parent's claim to such an exception is evaluated in light of the Legislature's preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption.”].) Here, Mother never progressed past supervised visitation and had physical custody of A.S. for only a brief time during the few weeks after A.S. was born. We are satisfied beyond a reasonable doubt that any evidence of successful visitation during the cancelled visits during the post-reunification period would not have established the applicability of the beneficial-relationship exception.

III. DISPOSITION

The order terminating parental rights is affirmed.

Humes, P.J.

WE CONCUR:

Margulies, J.

Sanchez, J.

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